

September 21, 2006

William H. Davenport
Chief, Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554

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SEP 21 2006

Federal Communication Commission
Bureau / Office

Re: Court Remand of Section III.B of the Commission's March 2006
Omnibus Order Resolving Numerous Broadcast Indecency Complaints

Dear Mr. Davenport:

We are writing on behalf of the organizations listed below in response to the Commission's September 7 call for comment (FCC DA 06-1739) concerning certain indecency decisions relating to the fleeting use of expletives on broadcast television, which have been remanded to the Commission by the U.S. Court of Appeals for the Second Circuit. We strenuously object to the Commission's attempt to deny American citizens popular television content protected by the First Amendment. As the Commission has long recognized, the U.S. Supreme Court has repeatedly made clear that speech which the FCC vaguely defines as "indecent" is entitled to full First Amendment protection. Yet the Commission in the remanded decisions has announced that the mere fleeting use of an expletive violates its rules.

In a modern world, where technology provides parents with ample tools to monitor and control the video programming that enters the home, there is no justification for continued governmental regulation of purportedly "indecent" content. Using the V-Chip and ratings supplied by broadcasters, parents can ensure that the programming available to their children is age-appropriate and otherwise suitable.

Live broadcast television is a direct link to the real world around us, and while sometimes unpredictable, it is nonetheless one of the things that continues to bring Americans together to share historic moments. That is why millions of Americans gather around their televisions to watch breaking news, seminal sporting events and dramatic awards shows. Even scripted entertainment programming, if appropriately rated and intended for adults, can make reasonable use of fleeting expletives to intensify a compelling portrayal. Parents (or other adults) can choose not to join their fellow citizens in watching these programs if they decide that the content is inappropriate for their families. But in a free society, it should not be the role of the government to tell people what they can see and hear. If the FCC can ban "indecent" speech, what is to prevent it from censoring the expression of unpopular views and ideologies on grounds equally as vague as "indecency"?

Moreover, if broadcasters are exposed to the severe sanctions currently available under federal law merely for airing a fleeting expletive, especially during live

television, there will be an enormous chilling effect on free speech. Thus, broadcasters will refrain from airing any live material without significant delay and, potentially, editing of momentous historical events. Ultimately, that will drive more and more viewers to alternative sources that are not subject to indecency regulation, such as cable and the Internet. In that case, all Americans will suffer the consequences of a less robust and competitive over-the-air television system.

For nearly 30 years, the Commission appropriately found that the broadcast of a fleeting expletive did not implicate the indecency rules. Even the Supreme Court, in narrowly upholding the entire indecency enforcement regime, specifically emphasized: "We have not decided that an occasional expletive . . . would justify any sanction" See FCC v. Pacifica Foundation, 438 U.S. 726, 750 (1978). The organizations listed below believe that the remand of the litigation pending before the Second Circuit gives the Commission an important opportunity to return to its restrained approach to indecency enforcement when it comes to fleeting expletive cases. The Commission should move promptly to declare once again that the occasional broadcast of a fleeting expletive will not constitute actionable indecency or profanity, and in doing so strike a blow for the preservation of the unique character of free, over-the-air television.

Sincerely,

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